

**Introduced by Senator Harman**February 24, 2012

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An act to amend Section 68152 of the Government Code, relating to courts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1489, as introduced, Harman. Courts: destruction of court records.

Existing law authorizes the court clerk to destroy court records after notice of destruction, if there is no request and order for transfer of the records, upon the expiration of specified time periods after final disposition of the case. Court records in capital felony cases are required to be retained permanently, unless the charge is disposed of by acquittal or a sentence less than death, in which circumstance the case is reclassified and different time periods for retention apply.

This bill would permit the destruction of court records in capital felony cases one year after the execution or death of the defendant while awaiting execution.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 68152 of the Government Code is
- 2     amended to read:
- 3     68152. The trial court clerk may destroy court records under
- 4     Section 68153 after notice of destruction, and if there is no request
- 5     and order for transfer of the records, except the comprehensive
- 6     historical and sample superior court records preserved for research
- 7     under the California Rules of Court, when the following times

- 1 have expired after final disposition of the case in the categories  
2 listed:
- 3 (a) Adoption: retain permanently.  
4 (b) Change of name: retain permanently.  
5 (c) Other civil actions and proceedings, as follows:  
6 (1) Except as otherwise specified: 10 years.  
7 (2) ~~Where~~ *If* a party appears by a guardian ad litem: 10 years  
8 after termination of the court's jurisdiction.  
9 (3) Domestic violence: same period as duration of the restraining  
10 or other orders and renewals, then retain the restraining or other  
11 orders as a judgment; 60 days after expiration of the temporary  
12 protective or temporary restraining order.  
13 (4) Eminent domain: retain permanently.  
14 (5) Family law, except as otherwise specified: 30 years.  
15 (6) Harassment: same period as duration of the injunction and  
16 renewals, then retain the injunction as a judgment; 60 days after  
17 expiration of the temporary restraining order.  
18 (7) Mental health (Lanterman Developmental Disabilities  
19 Services Act and Lanterman-Petris-Short Act): 30 years.  
20 (8) Paternity: retain permanently.  
21 (9) Petition, except as otherwise specified: 10 years.  
22 (10) Real property other than unlawful detainer: retain  
23 permanently if the action affects title or an interest in real property.  
24 (11) Small claims: 10 years.  
25 (12) Unlawful detainer: one year if judgment is for possession  
26 of the premises; 10 years if judgment is for money.  
27 (d) Notwithstanding subdivision (c), any civil or small claims  
28 case in the trial court:  
29 (1) Involuntarily dismissed by the court for delay in prosecution  
30 or failure to comply with state or local rules: one year.  
31 (2) Voluntarily dismissed by a party without entry of judgment:  
32 one year.  
33 Notation of the dismissal shall be made on the civil index of  
34 cases or on a separate dismissal index.  
35 (e) Criminal.  
36 (1) Capital felony (murder with special circumstances where  
37 the prosecution seeks the death penalty): ~~retain permanently one~~  
38 *year after the execution or death of the defendant while awaiting*  
39 *execution*. If the charge is disposed of by acquittal or a sentence  
40 less than death, the case shall be reclassified.

1 (2) Felony, except as otherwise specified: 75 years.

2 (3) Felony, except capital felony, with court records from the  
3 initial complaint through the preliminary hearing or plea and for  
4 which the case file does not include final sentencing or other final  
5 disposition of the case because the case was bound over to the  
6 superior court: five years.

7 (4) Misdemeanor, except as otherwise specified: five years.

8 (5) Misdemeanor alleging a violation of the Vehicle Code,  
9 except as otherwise specified: three years.

10 (6) Misdemeanor alleging a violation of Section 23103, 23152,  
11 or 23153 of the Vehicle Code: 10 years.

12 (7) Misdemeanor alleging a violation of Section 14601, 14601.1,  
13 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five  
14 years.

15 (8) Misdemeanor alleging a marijuana violation under  
16 subdivision (b), (c), (d), or (e) of Section 11357 of the Health and  
17 Safety Code, or subdivision (b) of Section 11360 of the Health  
18 and Safety Code in accordance with the procedure set forth in  
19 Section 11361.5 of the Health and Safety Code: records shall be  
20 destroyed two years from the date of conviction or from the date  
21 of arrest if no conviction.

22 (9) Misdemeanor, infraction, or civil action alleging a violation  
23 of the regulation and licensing of dogs under Sections 30951 to  
24 30956, inclusive, of the Food and Agricultural Code or violation  
25 of any other local ordinance: three years.

26 (10) Misdemeanor action resulting in a requirement that the  
27 defendant register as a sex offender pursuant to Section 290 of the  
28 Penal Code: 75 years. This paragraph shall apply to records relating  
29 to a person convicted on or after September 20, 2006.

30 (11) Infraction, except as otherwise specified: three years.

31 (12) Parking infractions, including alleged violations under the  
32 stopping, standing, and parking provisions set forth in Chapter 9  
33 (commencing with Section 22500) of Division 11 of the Vehicle  
34 Code: two years.

35 (f) Habeas corpus: same period as period for retention of the  
36 records in the underlying case category.

37 (g) Juvenile.

38 (1) Dependent (Section 300 of the Welfare and Institutions  
39 Code): upon reaching age 28 or on written request shall be released  
40 to the juvenile five years after jurisdiction over the person has

1 terminated under subdivision (a) of Section 826 of the Welfare  
2 and Institutions Code. Sealed records shall be destroyed upon court  
3 order five years after the records have been sealed pursuant to  
4 subdivision (c) of Section 389 of the Welfare and Institutions Code.

5 (2) Ward (Section 601 of the Welfare and Institutions Code):  
6 upon reaching age 21 or on written request shall be released to the  
7 juvenile five years after jurisdiction over the person has terminated  
8 under subdivision (a) of Section 826 of the Welfare and Institutions  
9 Code. Sealed records shall be destroyed upon court order five years  
10 after the records have been sealed under subdivision (d) of Section  
11 781 of the Welfare and Institutions Code.

12 (3) Ward (Section 602 of the Welfare and Institutions Code):  
13 upon reaching age 38 under subdivision (a) of Section 826 of the  
14 Welfare and Institutions Code. Sealed records shall be destroyed  
15 upon court order when the subject of the record reaches the age  
16 of 38 under subdivision (d) of Section 781 of the Welfare and  
17 Institutions Code.

18 (4) Traffic and some nontraffic misdemeanors and infractions  
19 (Section 601 of the Welfare and Institutions Code): upon reaching  
20 age 21 or five years after jurisdiction over the person has terminated  
21 under subdivision (c) of Section 826 of the Welfare and Institutions  
22 Code. May be microfilmed or photocopied.

23 (5) Marijuana misdemeanor under subdivision (e) of Section  
24 11357 of the Health and Safety Code in accordance with procedures  
25 specified in subdivision (a) of Section 11361.5 of the Health and  
26 Safety Code: upon reaching age 18 the records shall be destroyed.

27 (h) Probate.

28 (1) Conservatorship: 10 years after decree of termination.

29 (2) Guardianship: 10 years after the age of 18.

30 (3) Probate, including probated wills, except as otherwise  
31 specified: retain permanently.

32 (i) Court records of the appellate division of the superior court:  
33 five years.

34 (j) Other records.

35 (1) Applications in forma pauperis: any time after the disposition  
36 of the underlying case.

37 (2) Arrest warrant: same period as period for retention of the  
38 records in the underlying case category.

39 (3) Bench warrant: same period as period for retention of the  
40 records in the underlying case category.

1 (4) Bond: three years after exoneration and release.

2 (5) Coroner's inquest report: same period as period for retention  
3 of the records in the underlying case category; if no case, then  
4 permanent.

5 (6) Court orders not associated with an underlying case, such  
6 as orders for destruction of court records for telephone taps, or to  
7 destroy drugs, and other miscellaneous court orders: three years.

8 (7) Court reporter notes: 10 years after the notes have been taken  
9 in criminal and juvenile proceedings and five years after the notes  
10 have been taken in all other proceedings, except notes reporting  
11 proceedings in capital felony cases (murder with special  
12 circumstances where the prosecution seeks the death penalty and  
13 the sentence is death), including notes reporting the preliminary  
14 hearing, which shall be retained permanently, unless the Supreme  
15 Court on request of the court clerk authorizes the destruction.

16 (8) Electronic recordings made as the official record of the oral  
17 proceedings under the California Rules of Court: any time after  
18 final disposition of the case in infraction and misdemeanor  
19 proceedings, 10 years in all other criminal proceedings, and five  
20 years in all other proceedings.

21 (9) Electronic recordings not made as the official record of the  
22 oral proceedings under the California Rules of Court: any time  
23 either before or after final disposition of the case.

24 (10) Index, except as otherwise specified: retain permanently.

25 (11) Index for cases alleging traffic violations: same period as  
26 period for retention of the records in the underlying case category.

27 (12) Judgments within the jurisdiction of the superior court  
28 other than in a limited civil case, misdemeanor case, or infraction  
29 case: retain permanently.

30 (13) Judgments in misdemeanor cases, infraction cases, and  
31 limited civil cases: same period as period for retention of the  
32 records in the underlying case category.

33 (14) Minutes: same period as period for retention of the records  
34 in the underlying case category.

35 (15) Naturalization index: retain permanently.

36 (16) Ninety-day evaluation (under Section 1203.03 of the Penal  
37 Code): same period as period for retention of the records in the  
38 underlying case category, or period for completion or termination  
39 of probation, whichever is longer.

1 (17) Register of actions or docket: same period as period for  
2 retention of the records in the underlying case category, but in no  
3 event less than 10 years for civil and small claims cases.

4 (18) Search warrant: 10 years, except search warrants issued in  
5 connection with a capital felony case defined in paragraph (7),  
6 which shall be retained permanently.

7 (k) Retention of the court records under this section shall be  
8 extended as follows:

9 (1) By order of the court on its own motion, or on application  
10 of a party or an interested member of the public for good cause  
11 shown and on those terms as are just. A fee shall not be charged  
12 for making the application.

13 (2) Upon application and order for renewal of the judgment to  
14 the extended time for enforcing the judgment.